



Commitments for Protection and Solutions in the OSCE Region

UNHCR Contribution to the OSCE Human Dimension Implementation Meeting Working Session 3: Humanitarian Issues and Other Commitments: Refugees and displaced persons Warsaw, 24 September to 5 October 2012

I. Introduction

At the end of 2011, worldwide an estimated 42.5 million persons had unwillingly left their homes or remained in exile due to the threat of persecution, serious human rights violations or conflict. Many countries were affected by events precipitating new forced displacement, including in West Africa, the Horn of Africa, North Africa and the Middle East. In addition, an estimated 12 million people around the world did not possess a nationality and were denied the enjoyment of rights as citizens. Some 4.8 million persons of UNHCR's concern are in the OSCE region. They include some 2.4 million refugees and asylum seekers, 1.4 million internally displaced persons and one million returnees, stateless and other persons of concern.

II. Emergency response

Dramatic events swept across the Middle East and various parts of Africa in 2011 and into 2012, causing hundreds of thousands of persons to seek sanctuary. During the Libya crisis, over one million migrants and refugees escaped the fighting, benefiting from the life-saving generosity granted by neighboring countries: A humanitarian airlift organized jointly by UNHCR and IOM – as well as by States – supported the rapid return of some 144,000 migrant workers to their countries of origin. Tragically, over 1,500 asylum seekers and migrants lost their lives trying to cross the Mediterranean Sea to Europe. Despite the end of hostilities, third country nationals in Libya remain at risk of arbitrary arrest and detention.

As of early September 2012, UNHCR and countries neighboring the Syrian Arab Republic (primarily Lebanon, Jordan and the OSCE participating State Turkey) had registered over 208,223 persons with some 80,000 refugees alone in Turkey, who had left the country since the uprising started there in March 2011, and Turkey announced a formal temporary protection regime in October 2011.

The instrumental role of resettlement in providing solutions to refugees in emergency situations was reaffirmed during the Libya crisis, as was its symbolic importance demonstrating solidarity with and support to host States. Emergency Transit Facilities in Romania and Slovakia have facilitated UNHCR's response to increasingly diversified evacuation needs from many countries.

A series of sudden-onset natural disasters – including the earthquake and tsunami in Japan and the earthquake in eastern Turkey – also resulted in displacement, although not all of these disasters required a coordinated international response.

III. Refugee protection

Emergency situations were not the only challenges. Lack of political will, as well as increasing government concerns about transnational threats, including terrorism and crime, and broader migration trends, limited progress in some asylum systems. Asylum is often seen as a costly burden which is unequally distributed; meanwhile refugees, along with other foreigners, have become scapegoats for social ills and are frequently used in polemical debates within and between States. International and regional cooperation in building and maintaining quality asylum systems, and ensuring access to those systems, is a necessary foundation to enable asylum seekers and refugees to enjoy their rights.

A. Respecting the principle of *non-refoulement*

The principle of *non-refoulement*, which prohibits returning anyone to a territory where he/she faces threats to life or freedom, is central to the 1951 Convention relating to the Status of Refugees and also a norm of customary international law. Despite this, *refoulement* to certain countries rose in 2011, as did threats of *refoulement* in the context of national security. There were particularly serious cases of *refoulement* involving the extradition of refugees recognized under international law, also in the OSCE region, despite repeated and explicit requests by UNHCR and others to States concerned. Such cases demonstrate a clear breach in the obligation to respect the principles of *non-refoulement*. The obligation of *non-refoulement* includes non-rejection at the frontier. UNHCR continued to work with States to develop and implement protection-sensitive entry systems and to carry out joint border monitoring exercises, training and capacity building of border officials, and the development of standardized procedures for the identification, registration and claim determination for refugees and asylum seekers. In the context of developing and strengthening protection-sensitive border management systems, UNHCR works closely with the OSCE Border Management Staff College in Dushanbe and will, inter alia, hold a *High-Level Forum on Border Management in Humanitarian Emergencies* in Dushanbe, 24-28 September 2012, to address emergency preparedness and response in the context of border management during mass influxes.

B. Building and maintaining quality asylum systems

Building and maintaining quality asylum systems is an essential aspect of the implementation of the 1951 Convention and general migration management. Ensuring access to asylum procedures requires clear allocation of responsibility for determining asylum claims and a fair sharing of such responsibility based on solidarity among States. In the EU, UNHCR is ready to contribute to an early warning system involving data gathering and preventive planning to avoid situations of particular pressure developing into crises, foreseen under planned amendments to the *European Union Council Regulation 343/2003/EC* of 18 February 2003 (establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national).

A number of countries have continued to strengthen their national legislative and institutional frameworks and capacities for the protection of asylum seekers and refugees. UNHCR remains supportive of these efforts and will enhance its work in countries that pledged to improve their asylum systems at the *Ministerial Intergovernmental Event of Member States of the United Nations* on the occasion of the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness, held in December 2011. In the wider OSCE region, these States include the Russian Federation and Afghanistan. In addition, new refugee and asylum laws and regulations were adopted in a number

of countries, including Liechtenstein; meanwhile Australia, Georgia and Ukraine passed legislation to determine both refugee status and complementary protection needs within a single procedure.

UNHCR continued to work closely with the European Asylum Support Office (EASO). Together with the European Commission, the EASO and EU Member States, UNHCR continued to assist Greece in implementing its action plan for migration management and asylum reform, launched in 2010.

C. Respecting the prohibition of arbitrary detention

The fundamental right to liberty and security expressed in all major international and regional human rights instruments applies to all persons, regardless of their immigration or other status. Yet the detention of asylum seekers and refugees is on the rise, including the detention of children. National and regional consultations on alternatives to detention organized by UNHCR in partnership with civil society and relevant governments were inter alia held in Australia, Belgium and Latvia. Access to detention facilities by both UNHCR and civil society partners provides an important check to better ensure dignified treatment and access to asylum. Limited access, on the other hand, may endanger lives and can result in *refoulement*. Clear standards providing for periodic and judicial review of detention, access to detention facilities by independent monitors, including UNHCR, and training of relevant officials have resulted in the release of many asylum seekers and refugees who were unlawfully detained. In the years ahead, UNHCR will embark on a global campaign to promote alternatives to the detention of asylum seekers and refugees and humane reception conditions. A number of tools to assist States and other actors are under development.

D. Ensuring safe residence

Many refugees live in camps, settlements or collective centers where they do not enjoy adequate standards of living and have limited prospects for a dignified life, including in the OSCE region. While camps may be unavoidable in emergency situations, shortly thereafter they may inadvertently serve to delay the resumption of self-reliance. While some camps and settlements are highly organized villages or cities, others are chaotic and unsafe, posing threats to the security of refugees, particularly the safety and well-being of women and children. Lack of space and livelihood opportunities put girls and boys at risk of sexual violence and exploitation and lead to harmful coping strategies.

E. Expanding educational opportunities

Expanding access to education remains a priority for UNHCR. In Central Europe, UNHCR published research recommending action to address gaps in access to education for refugees, stateless persons and internally displaced persons (IDPs). Adolescents face specific protection risks and a lack of access to secondary education or vocational training will further exacerbate these risks. Providing such opportunities to adolescents is not a luxury but an essential protection intervention.

F. Sexual and gender-based violence

Situations of forced displacement are not gender-neutral. Women and girls are disproportionately targeted in violent situations and constitute the majority of civilian victims of armed conflict. A particular obstacle continued to be the lack of actual or meaningful representation in family and community decision-making. Women require support to develop their leadership and advocacy skills. In this respect, UNHCR highly welcomes the OSCE's enhanced focus on the implementation

of *UNSCR 1325 on Women, Peace and Security* and sees ample ground for a closer cooperation on 1325 with the OSCE's Gender Section.

IV. Mixed movements: refugee protection and international migration

Modern migration trends confirm that complex, irregular mixed movements will continue to be a challenge for States also in the OSCE region. Such mixed migration involves not only those with international protection needs traveling irregularly alongside other groups, using the same routes and methods of transport, but also individuals themselves having multiple and mixed motivations for movement, including economic, social and political vulnerabilities and opportunities.

More innovative approaches to migration policies and strategies are needed to maintain the integrity of asylum, to identify those in need of international protection, as well as to address the needs of many undocumented migrants and others with specific needs, including unaccompanied and separated children. This requires new thinking, partnership and leadership. UNHCR has been engaged in regional and global discussions and initiatives on the interface between refugee protection and international migration for many years. In order to address the complex challenges of mixed movements, UNHCR has continued to work with partners to promote global and regional processes such as the *Regional Ministerial Conference on Refugee Protection and International Migration* that took place in Almaty in March 2011. The Conference was co-organized by UNHCR and IOM, in close cooperation with the OSCE and the United Nations Regional Center for Preventive Diplomacy for Central Asia (UNRCCA) and was convened under the auspices of the Government of the Republic of Kazakhstan. In addition to the five Central Asian countries, Afghanistan, Iran, Turkey, Azerbaijan, Russian Federation and the People's Republic of China attended the event which led to the unanimously agreed *Almaty Declaration*. In follow-up to the March 2011 Conference, a *Regional Cooperation Framework* and *Regional Action Plan* have been prepared through a national consultation process in all Central Asian countries, containing specific recommendations for future work.

In South-Eastern Europe, UNHCR has initiated a regional process for managing mixed movements with an emphasis on establishing early profiling and referral mechanisms, differentiated procedures, managed returns, and quality initiatives to support States in enhancing their asylum systems. In Eastern Europe, the newly-established *Panel on Migration and Asylum*, under the auspices of the EU Eastern Partnership, will build on the achievements and experiences of the Söderköping Process, presenting a new opportunity to strengthen regional cooperation.

Despair often leads to people taking dire measures to escape their plight. Migrants as well as refugees are susceptible to the abuse of human traffickers and smugglers, including at the most extreme, kidnapping, organ removals and rape. UNHCR continued to work with partners to improve cooperation on the identification and protection of victims of trafficking and works closely with the Office of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings.

V. Protection of internally displaced persons

A. Local and community-based protection

The most effective protection mechanisms for IDPs often exist at the local level. Support for self-organization and empowerment is equally important in protracted displacement situations as in conflict areas where populations are at risk of displacement. For example, in the Western Balkans,

a regional project on social inclusion provided vulnerable Roma, Ashkali and Egyptian populations, including the non-displaced, with free legal assistance and birth registration documents.

B. Legal developments

Worldwide there have been several positive legal developments in enhancing laws and policies for IDPs at both regional and national levels. In the wider OSCE region, UNHCR has provided support to Afghanistan in the development of national laws and policies on internal displacement.

C. Global humanitarian and operational solidarity

UNHCR has a particular responsibility to reinforce the humanitarian community's protection response to complex emergencies, including situations of internal displacement, and aims at complementary co-operation. In the OSCE region, UNHCR is engaged in IDP situations in South-Eastern Europe, the Caucasus and in Central Asia and works closely with relevant OSCE Institutions and the UN Special Rapporteur on the Human Rights of Internally Displaced Persons.

D. Protection checklist along the conflict cycle

The Vilnius Ministerial Council adopted a far-reaching decision on the conflict cycle (OSCE Ministerial Decision No. 3/11 on *Elements of the Conflict Cycle, related to enhancing the OSCE's capabilities in early warning, early action, dialogue facilitation and mediation support, and post-conflict rehabilitation*). The decision makes inter alia reference to displacement and protection and recognizes "that the rights of persons belonging to national minorities as well as the rights of persons at risk of displacement or already affected by it, need to be effectively protected in all phases of the conflict cycle". UNHCR provides support to OSCE Institutions to develop a checklist for critical protection issues associated with the various stages of the conflict cycle.

VI. Durable solutions for refugees and IDPs

Millions of refugees and IDPs worldwide, including in the OSCE region, remain without access to timely and durable solutions to their displacement – the ultimate goal of international and national protection alike. Such solutions require sustained cooperation and concerted action. It is only through efforts made in solidarity by all stakeholders – including refugees, countries of origin and host countries, as well as IDPs, communities of origin and host communities – that solutions can be achieved.

A. Solving protracted refugee and IDP situations

Serious efforts to find solutions for refugees in protracted situations have continued in 2011. Through a regional initiative, Bosnia and Herzegovina, Croatia, Montenegro and Serbia agreed to resolve displacement stemming from the 1991-1995 conflict. They also agreed to provide housing for the most vulnerable among the displaced, many of whom still live in collective centers. This regional housing project, supported by funds generated at an April 2012 conference, will offer a permanent housing solution to those who opt for either voluntary return and reintegration in their place of origin, or local integration in their current place of residence. It is hoped that this project will serve as a catalyst for enhanced social integration to end protracted displacement.

Afghans still constitute the largest protracted refugee population in the world. There are close to 2.7 million registered Afghan refugees, some of whom have been residing in neighboring Pakistan and the Islamic Republic of Iran for over 30 years. A multi-year solutions strategy has been developed, the result of intense consultations between the three governments and UNHCR. Underlying the strategy is the imperative of enabling conditions conducive to voluntary

repatriation and sustainable reintegration through community-based investments in areas of high return in Afghanistan – notably the promotion of livelihood activities – while preserving asylum space in neighboring host countries. In countries of asylum, this includes enhanced support to refugee-hosting communities, alternative temporary-stay arrangements and opportunities for resettlement. An international conference on Afghan refugees, held in Geneva on 3 May 2012 and co-hosted by UNHCR and the Government of Switzerland, drafted and endorsed this new solutions agenda.

B. Voluntary repatriation

Year-on-year voluntary repatriation figures in the OSCE region have dropped, highlighting the persistence of protracted displacement. While voluntary repatriation remains the preferred durable solution in many situations, the number of persons repatriating has continually decreased in recent years in the OSCE region. This trend is contrary to what UNHCR witnessed globally where figures have gone up compared to earlier years. Existing voluntary repatriation in the OSCE region takes place mainly in the Western Balkans.

C. Self-reliance and local solutions

The 2011 commemorations provided an opportunity to generate additional interest and commitment to local integration as a durable solution. Many countries indicated a willingness to consider some form of local integration – from alternative legal status to naturalization – in their pledges at the 2011 Ministerial Intergovernmental Event. At the policy level, UNHCR has sought to systematize its approach towards peaceful coexistence and community reconciliation. These developments are already having an impact in the field: in Kyrgyzstan for example, UNHCR implemented 129 small-scale co-existence projects between 2010 and 2011.

VII. Statelessness

Several substantial breakthroughs on statelessness were due, in part, to the increased global attention to the problem brought by the 50th anniversary commemorations of the 1961 Convention on the Reduction of Statelessness. A noteworthy success in 2011 was the accession of eleven States. In the OSCE region, Croatia, Georgia, the Republic of Moldova, Serbia and Turkmenistan acceded – to one or both of the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention. Globally, this is the highest number of accessions to the Statelessness Conventions in a single year since they were adopted, bringing to 74 the total number of States parties to the 1954 Convention, and 44 the number of States parties to the 1961 Convention, as of May 2012.

During the anniversary year, UNHCR sought to raise awareness of statelessness and mobilize responses. Regional conferences and seminars *inter alia* were held in the Western Balkans and Western Europe, while country-level events were organized in Almaty and Bishkek. A regional conference on civil documentation and registration in South-Eastern Europe jointly organized by the OSCE High Commissioner on National Minorities (HCNM), the European Commission and UNHCR highlighted issues related to civil registration and statelessness in the region. States participating in this conference adopted a declaration reiterating their commitment to fundamental human rights obligations and international instruments on statelessness.

Furthermore, States have expressed growing interest in establishing formal statelessness determination procedures, with ten States having formally pledged to do so. Studies commissioned by UNHCR mapped stateless populations in several industrialized States, including

the number and profile of stateless individuals, as well causes and possible solutions to their predicament. Studies published on Canada, the Netherlands and the United Kingdom of Great Britain and Northern Ireland also recommended that these governments establish statelessness determination procedures. To assist States and others, UNHCR released guidelines on the definition of a “stateless person,” as expressed in the 1954 Convention, and on stateless determination procedures.

Decisive progress was also made toward the resolution of some protracted statelessness situations. In Turkmenistan, two presidential decrees granted citizenship to 3,318 stateless persons in 2011. The decrees followed the completion of the second registration drive since 2007, organized by the Turkmen Government with UNHCR support, to identify undocumented individuals throughout the country. Progress in resolving statelessness continued in Kyrgyzstan, where more than 28,000 holders of expired Soviet passports received Kyrgyz passports, and 2,094 stateless persons were granted citizenship by decree between 2009 and 2011.

VIII. Conclusion

Human mobility including both, cross-border and internal displacement have been key features of almost all major world events in 2011/12, especially in the Middle East and in North, West and East Africa. Large scale refugee and IDP movements have demanded the support and solidarity of the international community. The goodwill shown by host and donor governments has been remarkable. More, however, is needed.

The scale and complexity of forced displacement is such that it cannot be solved by one State alone. Hence, the principles of solidarity, cooperation and partnership are at the core of the international protection regime. The 50th and 60th anniversary commemorations of the key refugee and statelessness instruments in 2011 saw the international community renew its commitment to persons in need of international protection, including through the *Ministerial Communiqué* and State pledges at the Ministerial Intergovernmental Event in December 2011. Taken as a whole, as reaffirmation of international cooperation and partnership, these pledges pave the way for substantial achievements in protection and solutions for refugees, stateless and internally displaced persons in the decade to come. UNHCR looks forward to reinforcing our co-operation with the OSCE and other stakeholders on the challenges ahead and ensuring that the very people affected remain at the centre of our continued attention.

UNHCR
September 2012